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### Supreme Court, January Term, 1883.

Her Majesty Queen Kamehameha IV., Queen Dowager, vs. CHAS. H. JUNG, et al., the Commissioners of Crown Lands.

Before JUD. C. J., McCully and JUST. J. J., McCully and JUST. J. J., McCully.

Action of ejectment tried before McCully, J. the jury being waived.

The Royal plaintiff, the relief of his late Majesty Kamehameha IV., brings the action for the recovery of one undivided moiety of ten certain pieces of land in her complaint described.

In line the complaint disclaims as to the fourth, seventh and ninth pieces. The several pieces, except the tenth, are parts of Land Commission Award No. 10,806 to His Majesty Kamehameha III. The origin of the title of these lots differs from that of the body of lands now known as the Crown Lands in several particulars. The Crown Lands, as appears by the Act to relieve the Royal Domain from incumbrances and to render the same inalienable, January 3, 1865, are constituted of a schedule of lands set forth in the Act of June 7, 1848, relating to the lands of His Majesty the King and of the Government. By this last named Act this enlightened and magnanimous Sovereign laid the foundation for the tenure of real estate now subsisting, by separating his ownership in all the lands of the Kingdom jointly and severally some recognized but not well defined rights of his chiefs, relinquishing to the general government for just distribution to claimants and for public ownership the greater part of the territory, and reserving for his individual ownership a royal estate which was catalogued in the Act. The pieces of land here in question were awarded to Kamehameha III, six or seven years subsequently, July 6th, 1854, January 14, 1855, and March 28, 1857. They are not His or Alipannas described merely by name, but surveyed lots of moderate size, one being but six-tenths of an acre, one is 17 acres. Kamehameha III, died on the 10th of December, 1854, subsequent to the award of all the pieces but the first. The claims on behalf of his estate are in the ordinary procedure of Land Commission business, as when application was made by private persons for kuleana awards. Some of these were disputed, and testimony was taken to determine the rightful claimant. The tenth piece in the complaint was awarded, by Award 6,752, to Nunnant and Kamehameha III, and a deed of partition was made August 20, 1855, between Nunnant and Kamehameha IV. The pieces thus awarded passed into the estate of Kamehameha III, together with the before-mentioned lands reserved.

The estate of Kamehameha III as well as the throne passed to Kamehameha IV., who continued to treat the Royal Domain, as his predecessor had done, as his private estate, selling and mortgaging pieces thereof as occasion suited, his consort joining in the deeds to release her claim. Upon his death, intestate, November 20, 1863, the throne passing to his brother by the provision of the will of Kamehameha III, the question of "the descent of the property held and possessed by his late Majesty Kamehameha IV.," came before the Supreme Court upon an agreed statement of facts. The opinion of the Court was written by Mr. Justice Robertson, whose thorough and judicial cast of mind was aided by the intimate acquaintance with the origin of land tenures in this Kingdom, derived from his labors as one of the Board of Commissioners to quiet Land Titles. The Court had access to the journals of the Privy Council, and to the records of the transactions leading to the present system of land titles, and the progress of ideas and events is luminously set forth in the decision, which must always remain among the most important contributions to Hawaiian history.

2nd Haw. Rep., p. 28.

As having a controlling influence on the findings in this case, and having been the basis of subsequent legislation, it is well to quote at large here the concluding paragraphs of that opinion.

"In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being treated as public domain or Government property, it was also his intention to provide that those lands should descend to his heirs and successors, the future owners of the crown, which the conqueror had won; we understand the act of 7th June, 1848, as having secured both these objects. Under that act the lands descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III.

"In our opinion the fifth clause of the will of Kamehameha III was not necessary to pass the reserved lands to Kamehameha IV., any more than the first clause was necessary to pass him the crown. He was entitled to inherit those lands by force of the act of 7th June, 1848, when he succeeded to the crown, in virtue of the proclamation made by his predecessor with the consent of the House of Nobles, and he was entitled as the adopted son of Kamehameha III to inherit the remainder of his estate not devised to any one else, subject to dower.

"We are clearly of opinion also that Her Majesty Queen Emma is lawfully entitled to dower in the reserved lands, except so far as she may have barred her right therein by her own act and deed. There is nothing in the act of 7th June, 1848, which can be understood as taking away the Queen's right of dower in the lands therein named; nor is there any law of this Kingdom which renders the matrimonial rights of the wife of the King any less than or any different from those of the wife of any private gentleman. Such was unquestionably the understanding of both Kamehameha III and his successor as to dower in those lands, which are to be dealt with in all respects as private inheritable property, subject only to the special legislative restriction on the manner of their descent.

"But His Majesty Kamehameha IV. was possessed of other property, both real and personal, at the time of his death, not affected with the special character attached to the reserved lands. The descent of that part of his estate cannot be governed by the general law of inheritance and distribution, and Her Majesty Queen Emma is therefore entitled as statutory heir to one half of that property, after the payment thereof of such portion of the late King's debts as are not specifically charged by mortgage or otherwise upon the reserved lands. Debts of the latter class ought clearly to be paid out of the estate encumbered therewith."

In consequence with the findings of the Court the Legislature passed the Acts of Dec. 31, 1864, "To make a permanent settlement on Her Majesty Queen Emma," and of Jan. 3, 1865, "To relieve the Royal Domain from incumbrances, and to render the same inalienable." The former provides an annuity to Queen Emma on condition of her release of dower in the Royal Domain. By the second Act the Government is authorized to issue exchequer bonds for the payment of mortgages on the Crown Lands to be repaid with interest from the income thereof. In 1866 the Legislature assumed the payment of these bonds and released the estate clear to the Commissioners.

It is plain from the foregoing cited facts and statements that the premises here in question are not a portion of the Crown lands of which the control is vested in the Crown Land Commissioners who are here Defendants, and that they descended to the personal heirs of Alexander Liholiho, who was Kamehameha IV.

The learned Attorney-General, on the part of the defendants, submits that the plaintiff is estopped from asserting her legal title on two grounds.

1. That if it had been the property of Kamehameha IV it must have been sold to pay his debts.

2. That he having accepted the relief from the Government, the Crown has now acquired this property.

He introduces the testimony of Gov. J. O. Dominis to this effect, that he was the Administrator of his Majesty Kamehameha IV., succeeding Mr. Wm. late Webster, on the death of that gentleman, and continued Administrator till the estate was settled. Pursuant to orders from the Probate Court, he sold, as he supposed, all the private lands of the Royal descent. He took possession of the Pa Moa, the lots at Waikiki, and the other lots embraced in this action. No claim was made at that time by the heirs. Witness was a Crown Land Commissioner from 1864 to 1878, and the agent for Crown Lands. He was also the business agent for Queen Emma from 1864 to 1874. He did not, as such agent, consider that they belonged to her (the heirs). These lands would have been sold at that time if he had supposed they were of the estate of Kamehameha IV.

Cross examination.—I don't remember a mortgage on Pa Moa, but think there was one. Received the income from Pa Moa, the lands at Waikiki and at Ekeia during the period of my commission. The lands sold were direct grants to or purchases by Liholiho. Considered the others to be Crown Lands.

Counsel agrees that there were no mortgages on any of the premises in this case, the mortgages being on Crown Lands and other lands than these. The probate records of the estate of Kamehameha IV. having been placed in evidence by the Plaintiff, I find that there were sundry orders of Court for the sale of real estate with confirmation of sales; that the Administrators received \$37,000 "from the treasury for the release of mortgages secured on Crown Lands," and that at the final settlement of his accounts and discharge January 15th, 1880, there was a balance due the estate of \$8,017.76, as by the account. There were sundry orders of the Court respecting sundry items, and

the concluding order was "that the Administrator be discharged from further responsibility, the residue in his hands amounting to \$8,017.76 being ordered to be paid to the Commissioners of Crown Lands of whom the court is apprised the Administrator is himself one, and is their business agent." The learned Counsel for the defendants submit in argument that the heirs of Kamehameha IV. having had the advantage of the statute of 1865 and no claim having been made against the possession of these pieces by the Crown, are now estopped. That the \$37,000 was a gift to the Crown lands by the nation and it makes no difference to them that it was not a payment from Crown Lands for the release of incumbrances, whereby the remainder of the estate was saved. That on the gift by the Government of this sum for the payment of the debts of decedent any private lands not sold remain charged with payment of that sum and with all sums advanced by the administrator. That if this is so the defendants' title in the position of a mortgagee in possession till the amount advanced shall be fully paid.

For the plaintiff it is contended that title as to the moiety vested in her on the death of her Royal Consort, and no act of the Legislature can divest her of her private property and no voluntary assumption of the debts of her husband can impose a lien on her estate. That these several pieces not being enumerated and made Crown Lands, and having been vested in her by the Legislature in a different form of title were not affected by statutes relating to Crown Lands. And, finally, that the plea of estoppel and of equitable lien could not be established in a court of law.

The court has also expressed its finding that the legal estate of these premises vested in the heirs. It remains only to consider the validity of the estoppel or lien. If the learned counsel for the plaintiff intended to maintain the last proposition expressed, they are met by the authority of *Kamohai vs. Kabele*, 3d Haw. R. 530, where the court adopts the principle that an equitable estoppel may be set up in actions of ejectment and constitute a bar to the action. The court must then consider if the facts in this case support an estoppel or establish an equitable lien.

The preamble of the Act of Dec. 31, 1864, states that by the existing law the Courts of the Kingdom of Hawaii are entitled to dower in the Royal Domain, as had been decided by the Court. She had therefore a right to it, and the concluding clause of the preamble of "whereas it is just and proper that Queen Emma should be enabled to maintain a style of living suitable to her station and dignity," is inconsequential, unless the permanent settlement was completely discontinued to the value of the dower, which is not pretended, for it was her right it was secured to her on the Royal Domain, and it was not for her benefit, but for that of the incumbent of the throne, that the Legislature voted to relieve the Crown estate of the charge by paying what would be taken by the plaintiff as an equivalent. The Act contains the sole condition that she shall first relinquish her dower in the Royal Domain, and it cannot be considered that she was to relinquish any other rights interest or estate.

The subsequent Act of Jan. 3d, 1865, makes the Royal Domain inalienable, places it in the custody of three Commissioners and authorizes the Minister of Finance to receive the annual revenue of the amount of not more than \$30,000, which the Commissioners, jointly with the Minister, may negotiate for the redemption of the mortgages which may remain unsatisfied, after the administrator of His late Majesty's estate has exhausted the private estate which the administrator may be legally entitled to use. The proposition of the defendants here, is that the administrator ought to have sold these premises if he were private estate. Let us see. The preamble of the Act refers only to mortgages charged on the Royal Domain, pursuant to the finding of the Court, that the Domain should pay what was charged upon it. It is admitted in proof that there was no mortgage on the premises, and the administrator's accounts state that the \$27,000 received from the treasury was to relieve mortgages charged on the crown lands. From this it follows that the administrator would not have been legally entitled to sell such private estate of the decedent as is here in question, for the payment of such debts as were met by the \$27,000 taken from the Treasury, and that he should not have sold them before taking funds from the Government.

But this sum of money was not at that time a gift to the Royal Domain, much less, was it a benefit to the plaintiff. She had parted with her interest therein, in consideration of the annuity from the Government. It does not appear that the amount of the permanent settlement had not been made with reference to the value of dower in the estate as mortgaged, and in any case, this amount had been agreed upon, with full consideration of other release than of the dower herein. It was yet only a loan of the Government credit. Section 5 provides that one fourth part of the annual revenue of the Crown Lands shall be paid into the Treasury to satisfy the interest and accumulate a fund for the payment of the bonds "until the entire sum authorized to be loaned should be paid."

In 1865, July 6th, was passed an Act which, reciting in a lengthy preamble that His late Majesty Kamehameha IV. had derived but small advantage from the Crown lands in consequence of the charges upon them, and in view, especially of His Majesty's generous and patriotic policy, to benefit of the reigning Sovereign, who might then enjoy the entire income of the Crown Estate. How then were the heirs of the private estate of the deceased Sovereign, bound by equitable principle to surrender this private inheritance for this consideration moving solely for the benefit of the incumbent of the throne? Or how can it be said that this contribution of the Government to the Crown Domain forms a lien on the inheritance which the Commissioners have held possession of, to be discharged before surrender? To whom should this lien be paid? If to the Commissioners, it is a gift of another \$27,000. And the Government does not hold the premises and demand payment.

If we then dismiss the claim as untenable on what may be called the facts of the case there remains only the claim as based on the declaration in the testimony of the plaintiff that he sold all the lands which he supposed to have belonged to Kamehameha IV. in his private right and would have sold these if he had considered them such. Little need be said upon this in view of the line of reasoning which the court has followed. Upon estoppel grounds the administrator was estopped from claiming that he injured the Crown Lands by neglecting to sell this estate before selling any part of the Crown Lands (if he did sell such) or before going on the Government credit, for he was also the Crown Land agent, and as such must be held to have foreborne to realize upon that estate which he says he might have sold. He left it where the heirs of the late title might at any time assert their claim as now the plaintiff has.

The finding of the court is for the plaintiff pursuant to the description and recitation of the complaint, less the pieces disclaimed. Lot No. 10, for the unsold remainder of the partition of Kamehameha IV. with costs.

W. R. Castle and F. M. Hatch for plaintiff; the Attorney-General for defendants.

Honolulu, March 3rd, 1883.

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